

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN ROYAL JOHNSON**, on February 18, 2003  
at 3:00 P.M., in Room 317-B&C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Royal Johnson, Chairman (R)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Gary L. Perry (R)  
Sen. Don Ryan (D)  
Sen. Emily Stonington (D)  
Sen. Bob Story Jr. (R)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Members Excused:** Sen. Corey Stapleton, Vice Chairman (R)

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Services Division  
Marion Mood, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB330, 2/7/2003; SB 335, 2/7/2003;  
SJ 13, 2/7/2003; SB 361, 2/11/2003;  
SB 365, 2/11/2003  
Executive Action: none

#### **HEARING ON SB 330**

**Sponsor:** SEN. JEFF MANGAN, SD 23, GREAT FALLS

**Proponents:** John Lawton, City Manager, Great Falls  
Peggy Beltrone, Cascade County Commissioner

**John Fitzpatrick, NorthWestern Energy**  
**Rhonda Carpenter, Great Falls Area Chamber of**  
**Commerce**  
**Gilda Clancy, MT For Responsible Energy**  
**Development (MRED)**  
**Jerry Driscoll, MT AFL-CIO**

**Opponents:**        **None**

**Opening Statement by Sponsor:**

**SEN. JEFF MANGAN, SD 23, GREAT FALLS,** opened by saying SB 330 required the Public Service Commission (PSC) to take into account the economic benefits associated with electricity supply procurement. The bill came about because of plans to build the Montana First Megawatts Project in Great Falls which was vital to the area's economic development.

**Proponents' Testimony:**

**John Lawton, Great Falls City Manager,** rose in support of SB 330, saying utilities were commonly regarded as an economic development tool and communities could not grow without them.

**Peggy Beltrone, Cascade County Commissioner,** stated as a member of the Citizen Advisory Panel for Montana Power Company and now NorthWestern Energy, she had followed the default supply issues for a number of years and fully supported SB 330, not only for Great Falls' sake but also for the sake of other projects. Throughout many meetings and discussions with the PSC, she never felt a connection between their deliberations and the consideration of economic development which in her opinion needed to be formalized. She pointed to the increased tax base during construction and integration of this plant which would benefit all of Montana and asked the commission to consider the benefits of local power supply versus out-of state electricity when setting rates.

**John Fitzpatrick, NorthWestern Energy,** professed his support of SB 330, claiming it was important for the PSC to consider the potential positive effects for Montana's economy when reviewing portfolio supply on behalf of NorthWestern Energy. He went on to say his company had a number of different options available in securing power which tended to be competitively bid but felt being able to buy power locally would be very beneficial. He welcomed the prospect of having rules in place to aid the PSC in their consideration of power supply procurement with regard to economic development.

**Rhonda Carpenter, Great Falls Area Chamber of Commerce**, stated in talking to a number of people across the state, she learned they were very interested in the creation of new jobs and business opportunities; her organization thought it important to encourage projects which not only provided energy but also economic development.

**Gilda Clancy, MT For Responsible Development of Energy (MRED)**, rose in support of SB 330 on behalf of her organization which promotes responsible development of natural resources and economic development to provide higher paying jobs, benefitting Montana families and increasing its tax base.

**Jerry Driscoll, MT AFL-CIO**, not wanting to repeat previous testimony simply stated economic development should be considered with regard to all projects.

**Informational Testimony:**

**Bob Rowe, PSC**, submitted written testimony, **EXHIBIT(ens36b01)**.

**Questions from Committee Members and Responses:**

**SEN. MIKE TAYLOR, SD 37, PROCTOR**, asked the sponsor to elaborate on what he meant by "economic benefits"; it seemed to him this term was fairly broad. **SEN. MANGAN** replied he did not want to limit the PSC's rule making to specific aspects of economic development so as not to tie their hands. It was his contention the commission would do the right things should two Montana companies vie for projects at competing sites. He went on to explain the economic benefits of a project were comprised of an increased tax base, property and payroll tax, high paying jobs not only during the construction phase but continuing throughout its existence, and it was vital to locate this power plant in Montana, and not lose it to another state because of the long term economic impact. He felt the commission informally considered economic development in their rule making but wanted them to adapt their rules to include consideration of this issue. **SEN. TAYLOR** referred to the sponsor's statement and asked **Commissioner Rowe** if the PSC had criteria to examine economic development. **Commissioner Rowe** replied they did not have specific criteria but reiterated the key element in their decision making was to provide stable, reliable and low-cost service for all customers. He was certain the sponsor did not suggest the PSC ought to favor one Montana project with higher costs or less favorable attributes over another one in Montana with lower costs or more favorable attributes on the basis of greater economic development in one county over another. **SEN. TAYLOR** talked about the prevailing sense that the PSC needed to

make some long-term commitments to get impending projects off the ground and asked for the commission's position on this issue.

**Commissioner Rowe** agreed long-term contracts were an essential part of a portfolio; the contracts which were entered into with PPL expire at the end of the current portfolio obligation, and he advised it was important for the Legislature to decide the portfolio obligation was permanent. Currently, contracts extend as far as the portfolio obligation, and he suggested to also preserve some flexibility in case the market went up or down.

**SEN. KEN TOOLE, SD 27, HELENA**, was concerned with pitting local interests versus the good of the state and wondered whether economic development should be included in the commission's decision making process if it meant higher rates for everyone while benefitting just one area. **Mr. Fitzpatrick** replied it should not; he felt the bill was designed to set guidelines, should fundamentally equal projects be brought forward, for the commission to select the one in Montana and concurred the PSC's primary responsibility was to provide for reliable source of electricity at just and reasonable rates; NorthWestern did not view this legislation as a mechanism to fund development in Montana at the expense of rate payers. **SEN. McNUTT, SD 50, SIDNEY**, surmised the sponsor was looking at contracts in-state versus out-of-state and agreed if the projects were really close, the one in Montana should be chosen. He was concerned, though, whether this would not pit communities against each other, each vying for the project's location, and having valid arguments for economic development in their areas; he mentioned projects at Great Falls, Hardin, Roundup, and Otter Creek. **SEN. MANGAN** explained the original version of SB 330 contained the term "local" development which he took out because this bill was designed to promote economic development for all of Montana, and he felt sure this legislation accomplished that. He had brought it forward because the PSC's decision should not be just about rates but also about helping the state as a whole. Depending on the type of generation, he did not feel the above mentioned projects necessarily competed with each other, some could be working hand in hand, and each of them had a beneficial impact on the state. **SEN. McNUTT** repeated his concern that this could create a turf war.

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**CHAIRMAN JOHNSON, SD 5, BILLINGS**, referred to lines 18 and 20 of the bill and asked why "distribution services provider" was stricken. **SEN. MANGAN** replied **Mr. Everts** had drafted it, and he assumed it was to clean up language from HB 474. **CHAIRMAN JOHNSON** wondered whether "economic benefits" on line 25 and 26 was synonymous with the term "economic development" used in testimony, which **SEN. MANGAN** confirmed. **CHAIRMAN JOHNSON** then inquired whether the PSC would be required to consider the distance or uneconomic benefits for everyone on the system which

might deter from locating a generating plant in a certain area.

**SEN. MANGAN** replied the PSC's rule making would certainly address possible detrimental impact; he just had not formulated this issue in the bill. **CHAIRMAN JOHNSON** had heard about the assessment of a building fee on all rate payers on the system over a period of twenty years, should Montana First Megawatts be built. **SEN. MANGAN** did not know the answer and referred the question to **Mr. Fitzpatrick** who advised this was not correct; the company contracted for the delivery of electricity, and the standard method in which these types of contracts are set up stated the fee for electricity which is based on a series of charges the plant incurs; the capacity charge is based on the capital investment in the plant; added to it are the various operating expenses plus the fuel cost, resulting the contract's "floating" price for electricity. He explained the "floating" price for electricity arose from the fluctuation of the price of gas because the price of electricity coming out of any one plant was tied to it; payment of the capacity charge ensured the right to access the power generated by the gas turbine when it was needed. He explained this was in contrast to the "rolling reserves" of the old days which meant plants were on a stand-by basis and delivered power only when called upon. **CHAIRMAN JOHNSON** inquired if this was the charge levied on the rate payers currently on the system. **Mr. Fitzpatrick** replied the entire cost of a contract was passed through to the rate payer; he explained a portfolio should include base load contracts, covering electricity demand for every part of the day. NorthWestern, for example, had a base load contract with PP&L for 300 megawatts a day, seven days a week; a day's electricity demand seldom went below the 300 megawatts. In addition, the company has a contract for another 100 megawatts, 24/7, plus one for 150 megawatts for six days a week, for the 16 hours of peak demand; he explained the purpose for the "peaking plant" was flexibility, which is paid for with the capacity charge. **CHAIRMAN JOHNSON** asked the question of **Commissioner Rowe** who agreed with his predecessor's description and added an application concerning the Great Falls plant had not yet been submitted to the PSC but in reviewing the plant as part of the portfolio, the commission had researched this issue. He repeated, from his opening testimony, the commission's primary function was to ensure low-cost, stable, and reliable power over the long term; he was sure the sponsor was mindful of this and was trying to avoid pitting one locality against another because this was a very real dilemma. **CHAIRMAN JOHNSON** lastly asked him who the owner of the Great Falls plant would be after the period of twenty years, and **Commissioner Rowe** recalled several iterations concerning the plant but stated ultimately, it was an affiliate arrangement; it would be owned by the utility and be under a rate-based rate of return regulation.

**Closing by Sponsor:**

**SEN. MANGAN** was very passionate about the issue, repeating this legislation was not designed to benefit just Great Falls, and stressed the importance and value of competition. He felt this legislation was vital to getting the MT First Megawatts Project off the ground which would not only have an immediate positive impact, but would also attract other businesses for added long term economic benefits.

**HEARING ON SB 335**

**Sponsor:** **SEN. RICK LAIBLE, SD 30, VICTOR**

**Proponents:** **Dave Wheelihan, MT Electric Cooperative Assn.**  
**Richard Heitman, Flathead Electric Cooperative**

**Opponents:** **Douglas Johnson, AT&T Broadband**  
**Mark Baker, Bresnan Communications**  
**Michael Miller, Elk Communications Cable TV**  
**Tom Harrison, MT Cable Telecom Assn.**

**Opening Statement by Sponsor:**

**SEN. RICK LAIBLE, SD 30, VICTOR**, introduced **Amendment SB033501.apm, EXHIBIT(ens36b02)**, which eliminates Section (1) of the bill. He explained he was bringing SB 335 because the Flathead Electric Cooperative (FEC), according to current statute, changed the pole attachment rate after it acquired PacifiCorp, adding these rates were higher in rural as opposed to municipal areas with populations over 3,500 because the latter are governed by FCC rules, while rates in the rural areas have to be more flexible because the cost of providing services to a smaller population base is greater. This is one of the reasons why the FCC exempts rural areas from the rate schedule. AT&T Cable Services had argued unsuccessfully that FEC had to abide by the FCC rules regarding attachment rates and drafted an amendment in February 2001 to then SB 325 which specified rates under the FCC statutes only apply to municipal areas with populations over 3,500; both Flathead Electric and AT&T agreed to the amendment. The validity of this agreement was questioned by AT&T's successor ComCast, and subsequently, ComCast's successor, Bresnan Communications who raised this issue again. He noted the cooperatives are exempt from federal regulations for pole attachment fees which are lower than cooperative rates. SB 335 as amended clarifies cooperatives shall use rates exempt from FCC rules in their rural areas as defined in 35-18-104.

**Proponents' Testimony:**

Dave Wheelihan, MT Electric Cooperatives Assn., submitted written testimony, **EXHIBIT(ens36b03)**; the original amendment SB032501.alh, **EXHIBIT(ens36b04)**; and a pole attachment fee packet, **EXHIBIT(ens36b05)**. For legislative history purposes, he also provided **EXHIBIT(ens36b06)**, the February 7, 2001 minutes of the Senate Tax Committee as well as **EXHIBIT(ens36b07)**, the February 9, 2001 minutes which include Executive Action taken on SB 325, and a copy of the FCC order in the case of TCI Cablevision of Montana, Inc. vs. Energy Northwest, Inc., which is Flathead Electric's wholly owned subsidiary, **EXHIBIT(ens36b08)**.

*[Tape: 2; Side: A; Approx. Time Counter: 3.00]*

Richard Heitman, Manager, Flathead Electric Cooperative (FEC), advised AT&T had not paid their pole attachment fees for several years, despite attempts by FEC to reach a settlement. He admitted, even though his company had made concessions, they did deserve some of the blame for not being able to resolve this issue. Since taking the helm at FEC, he was able to reach an agreement with AT&T's representative, Doug Johnson, which resulted in that company's payment of the outstanding balance. He reported the two companies were close to signing a new contract; in the letter of agreement FEC signed with AT&T/ComCast, they stated their willingness to abide by any law dealing with the regulation of pole attachment costs; absent a respective law, and upon passage of this bill, FEC would negotiate in good faith with AT&T/ComCast or their successor. This commitment is evidenced by their continuing to charge telephone companies a lower rate than the \$18.77 allowed by law. He assured the committee his company was not out to gouge anyone; in the interest of fairness, they wanted to be able to recover a greater portion of the cost incurred since the telephone and cable companies, as well as their customers, avoided a great expense by simply attaching to an existing network of poles and cables in the rural areas, rather than having to erect their own. In closing, he reiterated SB 335 clarified language in the original bill, namely that it only applied to municipal areas.

#### **Opponents' Testimony:**

Douglas Johnson, AT&T Broadband, provided written testimony, **EXHIBIT(ens36b09)** with 7 numbered attachments, to which he added the following: Attachment (3) shows an annual charge of \$3.75 per pole within the territory acquired from PacifiCorp which FEC honored until their original contract expired at the end of 1999; following expiration of said contract, the annual charge rose to \$13.84 per pole, as per Attachment (4) which represents a 369% increase, and continued rising every year thereafter, as shown in Attachments (5) and (6). Prior to September 2002, when **Mr. Heidman** became General Manager, FEC would not negotiate with AT&T; after he came aboard, AT&T presented him with a copy of the

statute, explaining they were obligated to charge rates based on the federal formula; FEC complied and set its 2003 rates per pole at \$7.00. He cautioned if this bill became law, the charge will go back to at least \$18.77 because the cooperative will not be regulated by the PSC nor the FCC. In closing, he handed out testimony from the owner of Northwest Cable, Inc. who could not attend this hearing, **EXHIBIT (ens36b10)**.

**Mark Baker, Bresnan Communications**, stated he understood the agreement reached two years ago meant Flathead Electric Cooperative would comply with the FCC formula regarding the fees on territory acquired from PacifiCorp. He felt the purpose of SB 325 of 2001 was to maintain the status quo for the previously regulated territory of PacifiCorp. which meant the pole attachment rates would remain governed by the FCC. He bemoaned the fact SB 335 went too far by carving out the municipalities within the area in question but not the rural areas. He contradicted the sponsor's statement that there was a rural and an urban rate, maintaining there was a cooperative which was unregulated in its pole attachment rates, and then there were regulated utilities who have to comply with an FCC formula, whether they are rural or urban. He offered a solution previously dismissed by the cooperatives which would clarify the agreement from 2001, namely that the FCC formula applied to all of FEC's territory, not just the previously regulated PacifiCorp territory. He proposed to insert on page 2, line 13 of the bill, after the word "areas" new language: "which were previously served by a regulated utility", the concept being continued application of the FCC formula which has an 11.25% rate of return built in. He commended the sponsor for bringing forward **Amendment SB033501.apm** with regard to striking the provision of January 1, 2003 because otherwise, this legislation would have applied to FEC only; without this factor, application of the statutory language applied statewide which was important for future competition. In closing, he provided **EXHIBIT (ens36b11)** an overview of the company, and **EXHIBIT (ens36b12)**, a newspaper clipping regarding the purchase of ComCast by Bresnan Communications.

**Gary Wiens, MT Electric Cooperatives Assn.**, submitted **EXHIBIT (ens36b13)**.

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**Michael Miller, Elk Communications Cable TV**, rose in opposition of SB 335, stating during PacifiCorp's tenure, they were paying pole attachment fees of \$3.50; pursuant to their contract with FEC, the charge now is \$14.26; this contract expired at the end of 2001. At the same time, they were paying \$1.80 per secondary attachment to Citizen's Communication, and he pointed out this



fee was currently still at the same level. He explained they entered into the agreement with FEC because while they were performing a \$2 million upgrade to the Libby system, FEC threatened the crews with a cease and desist order unless they signed a contract. He stated he had not entered into any negotiation with FEC but was awaiting the outcome in the current dispute between FEC and AT&T. In rural Troy, his company was paying \$6.00, and on the Sperry system, the fee was \$5.50; he did not fully understand why he should be paying \$14.26 or even \$18.77, particularly since his cable did not reach way out into the country.

**Tom Harrison, MT Cable Telecommunications Assn.**, claimed any urban/rural breakdown of poles during the 2001 hearing of SB 325 was non-existent; the only reference was made to the number of poles, namely more than 10,000 in FEC's territory, and 900 more which were used in that territory prior to acquisition of PacifiCorp; this was the division the original bill contemplated, and it was still valid, not the charge variance. He added no one had ever referenced the number of poles in the rural versus the urban area. He then referred to EXHIBIT (7), the minutes of Executive Action on SB 325, where it states on page 5: "AT&T made the case during the hearing that the FCC rates be applied uniformly, for example, if they were brought into the jurisdiction of the Flathead Cooperative". He went on to lament the fact that enabling legislation allowed the cooperatives, with their income and property tax preferences, to purchase a private utility; all they had to do was agree to and sign contracts stating this would not affect the tax base of the acquired company. He questioned whether it was good public policy to enable a cooperative to extort money from private companies, enabling them to buy out yet another private electric company. Secondly, he contended uniform rates as stated by **SEN. STONINGTON** in the above quote were far more acceptable than the patchwork of rates imposed by six different cooperatives. Lastly, he commented it made no sense to erect a duplicate network of poles in order to circumvent the arbitrary charges by the cooperatives; sharing this infrastructure, at a reasonable price, made more sense because it was instrumental in providing multiple services to the consumer.

**Questions from Committee Members and Responses:**

**SEN. TOOLE** asked **Mr. Wheelihan** whether the pole attachment fee was an annual charge which **Mr. Wheelihan** confirmed, adding their rate payers paid for the poles as part of their rates while the other companies' customers benefitted. **SEN. TOOLE** inquired whether different companies, such as cable and telephone, each paid a fee for attaching their lines, and whether these fees were

equal. **Mr. Wheelihan** replied those fees would be the same under the FCC formula by which the co-ops are not bound; in FEC's case, the cable company had negotiated a fee of about \$7 whereas the telephone company paid roughly \$14. **SEN. DON RYAN, SD 22, GREAT FALLS**, asked **Mr. Harrison** who deferred to **Mr. Miller** how much such a pole cost and was told it was between \$200 and \$300. **SEN. RYAN** recalled his testimony with regard to being threatened with the cease and desist order and told to get off the poles; he wondered who had given the crew permission to get on the poles in the first place. **Mr. Miller** replied they had a contract with PacifiCorp allowing them to do this work but this contract was running out, and they were in the negotiating phase when this confrontation took place. **SEN. RYAN** asked if the owner of the poles was PacifiCorp, and **Mr. Miller** explained it was FEC because this happened after the acquisition. **SEN. BOB STORY, SD 12, PARK CITY**, wanted to know what Flathead Electric did with the money they charged for attachment fees since their customers were paying for the poles. **Mr. Wheelihan** responded the cooperative had to meet a certain revenue requirement, and its rates reflect all that goes into the pool, including these fees. **SEN. TAYLOR** recalled FEC accepted an attachment rate of \$7 after years of litigation and asked **Mr. Heitman** if they wanted to back out of that agreement now. **Mr. Heitman** stated this bill was to clarify what they thought the language was in the original bill, namely that the FCC formula applied to the municipal areas only. **SEN. TAYLOR** inquired how many poles there were in the rural versus the urban areas. **Mr. Heitman** replied they had about 3,000 poles in municipal and about 11,000 in rural areas. **SEN. TAYLOR** surmised, since FEC bought PacifiCorp at an exorbitant price which adversely affected electricity prices in the Flathead area, maybe these prices would be reduced due to the money collected from the pole fees, and asked **Mr. Johnson** if he was in the process of selling AT&T. **Mr. Johnson** confirmed this, explaining during his 6-year dispute with FEC, his company started out as TCI Cable and subsequently, became AT&T Broadband, then ComCast Corp. which was now in the process of selling its holdings in five states to Bresnan Communications. **SEN. TAYLOR** wondered if the high cost of attaching to FEC's poles had a negative bearing on the transaction, and **Mr. Johnson** said it certainly did. **SEN. TAYLOR** probed further by asking if he knew what co-ops charged in similar areas in the five state region. **Mr. Johnson** advised they paid \$6 to Mission Valley Power and \$12 to the Missoula Electric Co-operative (MEC) in the Missoula area; according to out-of-state managers in the company, prices ranges from \$4 to \$7. **SEN. TAYLOR** asked **Mr. Heitman** how many companies attached to their poles to which he replied several small cable and telephone companies did. **SEN. STORY** wondered if there was logic to their pricing system or if they charged what the market will bear. **Mr.**

**Heitman** stated they tried to use standard industry methodology and disputed the rates quoted by **Mr. Johnson** with regard to other states, saying they were significantly higher, some as much as \$50; the utility he left prior to coming to FEC charged \$15.

**SEN. STORY** asked what their increased costs were due to having these other cables on their poles. **Mr. Heitman** stated it was mainly inconvenience and upkeep or replacement, such as the maintenance necessary due to the weakening of the poles from drilling the holes through them. He told of the 1996 ice storm in the Spokane area which caused many poles to break off at the point of the attachments.

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**SEN. STORY** inquired how NorthWestern and Yellowstone Valley Electric apportioned the cost of those systems. **Mr. Doug Hardy, Montana Electric Cooperatives**, explained the capital was put up by the company which had the easement first since they used common easements; the cost was negotiated on an individual basis, and it was not treated as an attachment.

**Closing by Sponsor:**

**SEN. LAIBLE** reminded the committee the exemption was granted to the cooperatives because in less densely populated areas, the cost of providing services was greater than in urban areas. He understood what both sides were saying but stressed at the heart of the matter was the dispute over the content of the 2001 agreement. One side maintains the agreement was to have equal fees for all poles under the FCC formula while others say those in rural areas were excluded from that rule; the sponsor professed he did not know what was negotiated but was adamant in that this needed to be resolved. He asked the committee to pass this bill in order to force the involved parties to work together on an amendment agreeable to all, recognizing the higher cost of providing services in rural areas.

**Note: CHAIRMAN JOHNSON** announced a 15 minute break.

**HEARING ON SJ 13**

**Sponsor:** **SEN. KEN TOOLE, SD 27, HELENA**

**Proponents:** **Patrick Judge, MEIC**  
**Debbie Smith, NRDC/RNP**  
**Matthew Leow, MontPIRG**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**SEN. KEN TOOLE, SD 27, HELENA**, opened by saying SJ 13 provided for an interim study to investigate options for improving energy efficiency building codes.

**Proponents' Testimony:**

**Patrick Judge, MEIC**, stated the Environmental Quality Council had prepared some useful guides during the past interim, and he hoped the same could be achieved with regard to this topic. He felt Montana's energy codes could be improved upon as was done in some surrounding states, resulting in huge energy savings.

**Debbie Smith, NRDC/RNP**, agreed with **Mr. Judge's** testimony and added the best chance for energy efficiency was in new construction rather than retrofitting existing buildings. It made sense to study and possibly overhaul building codes with regard to energy laws because the cost savings of an efficiently built structure was substantial. She commented Universal Systems Benefit funds given to energy efficiency would go farther if invested in new construction as opposed to retrofitting. **Ms. Smith** also provided **EXHIBIT (ens36b14)**, Testimony of the Montana Chapter of the Sierra Club.

**Matthew Leow, MontPIRG**, also rose in support of SJ 13, stating this study was very appropriate given Montana's harsh climate and high heating bills during the winter.

**Informational Testimony:**

**Jim Brown, Building Codes Bureau, Department of Labor & Industry**, stated he was available to answer any questions.

**Questions from Committee Members and Responses:**

**SEN. EMILY STONINGTON, SD 15, BOZEMAN**, had attended an energy efficiency conference in New York City during the last interim and commented a variety of programs were presented which were geared toward energy efficiency; one was particularly interesting, namely the incenting of energy efficiency through USB funds in some of the major skyscrapers. She asked the sponsor whether comparing notes with other states would be part of this study. **SEN. TOOLE** hoped it would be, stressing this resolution's focus was building codes but he was mainly interested in establishing dialogue to find out how best to go about achieving energy efficiency, be it through building codes, incentive programs, or market transformation strategies. **SEN.**

**STORY, SD 12, PARK CITY**, inquired what types of buildings were subject to state codes in Montana. **Mr. Brown** advised there were several types, and it depended on the jurisdiction; in the state's jurisdiction which encompasses most of rural Montana, single family dwellings as well as four-plexes and less are exempt from their coverage of building codes, including energy codes. In certified local government programs, those types of dwellings are covered in the local jurisdiction. He estimated roughly half of the new single family dwellings are in the state's jurisdiction versus local jurisdiction. He added there was a voluntary self-certification by the contractor in statute for single family dwellings. **SEN. STORY** wondered who controlled the "doughnut areas" now. **Mr. Brown** replied they would be under the jurisdiction of the city which owned the "doughnut" which meant local building inspectors could inspect those homes for compliance with the energy codes in tandem with the building codes. **SEN. McNUTT, SD 50, SIDNEY**, asked for clarification of the term "energy code", and **Mr. Brown** explained the current energy code was CABLE, an acronym for the Council of American Building Officials. **SEN. McNUTT** asked if this referred to the wiring or the efficiency of a house. **Mr. Brown** stated the energy codes govern the "envelope" of the house for heat loss and energy conservation, including the heating and cooling uses of energy. **CHAIRMAN JOHNSON** inquired if inspectors in areas such as Billings set their own codes or if they used state codes. **Mr. Brown** replied according to state law, they have to use the codes adopted by the state; the issue in the doughnut areas is that they are under the local jurisdiction. **CHAIRMAN JOHNSON** asked how he felt about local versus state control. **Mr. Brown** stated he had no opinion on this issue. **SEN. STORY** inquired whether the energy code was adopted through statute or rule, and **Mr. Brown** replied it was adopted by administrative rule. He informed the committee a similar study was requested by the 1991 Legislature which asked of the EQC to reach a consensus with all parties interested in developing an energy code in Montana; prior to that, energy codes were a very contentious issue, much like the current doughnut issue. A report was made to the 1993 Legislature which then mandated adoption of the Montana Energy Code. **SEN. STORY** asked whether the electrical code was adopted by statute or rule, and **Mr. Brown** stated all of the codes were adopted by administrative rule; however, the electrical code was the National Electrical Code.

**Closing by Sponsor:**

**SEN. TOOLE** remembered the issue in 1991 was very contentious, adding the study work done back then was valuable. He stated his motivation was to find out, through this study, what type of construction was going on, and what types of fuel sources these

homes and buildings used so that energy efficiency and conservation measures could be developed.

HEARING ON SB 361

Sponsor: SEN. JOHN COBB, SD 25, AUGUSTA

Proponents: Frederick Weber, MontanaSky Net  
Joseph Sullivan, MontanaSky Net  
Chuck Evilsizer, MontanaSky Net, Ronan Telephone,  
Hot Springs Telephone

Opponents: REP. EILEEN CARNEY, HD 82, LIBBY  
John Konzen, Lincoln County Commissioner  
Rita Windom, Lincoln County Commissioner  
Marianne Roose, Lincoln County Commissioner  
SEN. AUBYN CURTISS, SD 41, FORTINE

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, AUGUSTA, presented SB 361, saying this bill eliminated the grandfather clause added to SB 327 during the 2001 session, thereby effectively ending Lincoln County's tenure as Internet Service Provider (ISP); this was supposed to have taken place before the 2003 Legislature convened.

Proponents' Testimony:

Frederick Weber, MontanaSky Net, submitted written testimony, EXHIBIT(ens36b15) with attachments (letters, e-mails, and newspaper clippings); EXHIBIT(ens36b16), EXHIBIT(ens36b17), EXHIBIT(ens36b18) which are supporting letters by Gary Hanson, Matthew Rumble and D.C. Orr, respectively; EXHIBIT(ens36b19), a printout of his computer poll; and EXHIBIT(ens36b20), signed petitions to support SB 361.

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 8.5}*

Joseph Sullivan, MontanaSky Net, also provided written testimony, EXHIBIT(ens36b21).

Chuck Evilsizer, MontanaSky Net, Ronan Telephone, Hot Springs Telephone, submitted written testimony, EXHIBIT(ens36b22).

Opponents' Testimony:

REP. EILEEN CARNEY, HD 82, LIBBY, told the committee back in 1994, the Libby telephone system was antiquated, routing calls

through Bonners Ferry, ID and Missoula which made it all but impossible to have Internet access; because of that company's refusal to provide internet service and because no one else seemed interested, Kootenet was started with a \$50,000 loan from the county, requiring them to provide access to the entire county. They relied on volunteers to educate businesses and individuals to the value of internet access, and over time, its membership grew to over 2,400 subscribers. She disputed **Mr. Weber's** claim Kootenet broke the agreement, saying they tried to become a cooperative but were threatened with a lawsuit by **Mr. Weber** if they changed their business structure. She maintained there was competition in Libby, and **Mr. Weber's** company was faring well in the downtown business district. Kootenet had tried to bring high-speed internet access to the area but had been unsuccessful so far because they were unable to incorporate the new technology into their system. In closing, she stated the Legislature should not be asked to referee a local problem and urged defeat of SB 361. **EXHIBIT (ens36b23)**, a letter from Steve Gunderson, was submitted to the secretary.

**John Konzen, Lincoln County Commissioner**, provided **EXHIBIT (ens36b24)**, a history of Kootenet, and **EXHIBIT (ens36b25)** which contained his written testimony as well as fact sheets and newspaper clippings. In addition, he spoke of the dream they turned into reality through countless hours of work and volunteers' tenacity in a community where no private company was willing to make an investment. He agreed government should not compete with the private sector but advised there was no private industry at that time. Lastly, he held up a 1 1/2" stack of e-mails from people in Libby, Troy, and Eureka, **EXHIBIT (ens36b26)**, all expressing opposition to SB 361, and urged the committee to table this bill, stressing Kootenet was performing a valuable and vital service to the area.

*{Tape: 4; Side: A}*

**Rita Windom, Lincoln County Commissioner**, also rose in opposition to SB 361 at the urging of her constituents who did not want to lose Kootenet. Much of her testimony was aimed at disputing **Mr. Weber's** claims such as the rate fluctuation which she said was due to either the purchase of equipment at various times or a surplus of funds which benefitted the customers, and she advised the current rate was \$16.95. She was proud of the job Kootenet did in providing jobs and service, especially during this time of economic adversity with the closure of the Stimson mill; she added the company was extending free internet service to 125 of the former Stimson employees until June 2003, to aid in their search for new jobs, schooling or relocation. This free service would be extended to anyone still enrolled in schooling until it was no longer needed.

**Marianne Roose, Lincoln County Commissioner**, stated she resided in Eureka where Kootenet served approximately 125 homes. It was also the town where **Mr. Weber** had started his business, MontanaSky Net, and where he recently asked residents participating in an economic development meeting to sign a petition in favor of SB 361, without any success. She echoed previous opponents' testimony, repeating how much Kootenet is valued by her constituents and urged the committee not to pass this bill.

**SEN. AUBYN CURTISS, SD 41, FORTINE**, reminded the committee of a punitive bill during the last session which asked Kootenet to divest itself of its investment; this resulted in the "grandfather clause" which SB 361 was trying to end, and she hoped the committee would see this effort for what it was, namely an attempt to eliminate competition in Lincoln County.

**Informational Testimony:**

**Chuck Evilsizer, Hot Springs Telephone**, stated 1994 was the very beginning of the "explosion" of the internet, with many more internet service providers doing business; he claimed SB 361 would not stifle but promote competition. High-speed internet service could be provided in a lot of ways; all that was needed was technical expertise and legal advice and it could flourish anywhere.

**Geoff Feiss, MT Telecommunications Assn.**, recalled SB 327 was introduced by Sen. Steve Doherty in 2001 and amended in a conference committee whereby it was agreed Kootenet, as the first provider of a valuable service, should be grandfathered in and recognized. He saw SB 361 as an attempt to go back on the original agreement and offered to answer any questions,

**Tony Herbert, Dept. of Administration**, stated he also witnessed the path of SB 327 but wanted to provide more insight into the state's systems. His department did not operate any public access service but did have some local governments and school systems connected to the state's network which was not affected by this bill or the previous one.

**Questions from Committee Members and Responses:**

There were no questions from the committee.

**Closing by Sponsor:**

**SEN. COBB** closed on SB 361.



**HEARING ON SB 365**

**Sponsor:** SEN. EMILY STONINGTON, SD 15, BOZEMAN

**Proponents:** Matthew Leow, MontPIRG  
Patrick Judge, MEIC  
Michele Reinhart, Northern Plains Resource Council  
Gene Fenderson, Progressive Labor Caucus  
Chris Christiaens, MT Farmers Union

**Opponents:** John Fitzpatrick, NorthWestern Energy  
Haley Beaudry, Columbia Falls Aluminum Company

**Opening Statement by Sponsor:**

SEN. EMILY STONINGTON, SD 15, BOZEMAN, presented SB 365 which requires a public utility to procure a minimum of 7% of its electricity supply for retail sales from qualifying renewable resources, beginning July 1, 2007. It directs the Public Service Commission (PSC) to define those terms and to provide for the enforcement of this standard. She added wind energy would be a good addition to the portfolio because Montana ranked fifth in the nation for harnessing wind energy and advised, even though it is still subsidized, the price for wind energy is decreasing and is expected to be fully competitive within the next ten years. Lastly, she pointed out thirteen other states already have renewable portfolio standards, with California and Texas being the largest ones.

**Proponents' Testimony:**

Matthew Leow, MontPIRG, rose in support of SB 365 and submitted **EXHIBIT (ens36b27)**, a wind power resource map. He explained a 7% standard meant 7% of the utility's total supply would have to come from renewable energy. He went on to say this created wholesale market demand, making it easier for an interested company to secure a loan to build a wind farm, for instance, since there was a market for the product. In closing, he stressed the environmental benefits from renewable portfolio standards which create energy without the associated air emissions as well as the fact that renewable energy generation created more jobs per dollar invested than the traditional coal-fired plant.

Patrick Judge, MEIC, provided **EXHIBIT (ens36b28)**, a wind energy fact sheet, and explained 7% of the average default supply represented about 50 megawatts, corresponding to a 150 megawatt wind plant; due to the intermittent nature of wind, a 30% capacity factor is applied. He pointed out NorthWestern Energy

had proposed a wind plant of this size in its first proposal and advised this bill applied only to NorthWestern Energy's service territory.

**Michele Reinhart, Northern Plains Resource Council**, also rose in support of SB 365, saying wind farms would be a boon to rural Montana because farming and ranching could exist side by side with the wind turbines. She also cited, according to the Department of Energy, wind farms could bring as much as \$1.2 billion in direct payments to landowners leasing their land for the wind turbines.

**Gene Fenderson, Montana Progressive Labor Caucus**, also lauded SB 365 and presented **EXHIBIT (ens36b29)**, comments submitted to the Nevada Public Service Commission by the Nevada AFL-CIO. He added it would behoove the state to take a look at geothermal energy in addition to wind power as well.

**Chris Christiaens, Montana Farmers Union**, also stood in support of SB 365.

**Opponents' Testimony:**

**{Tape: 4; Side: B}**

**John Fitzpatrick, NorthWestern Energy**, repeated his company was the only one affected by SB 365, and he wanted to provide their position on it, stressing while they were not opposed to use of renewable resources, they failed to see why this bill was needed. He asked the committee, should this bill pass, to define "electricity supply" on line 29 as "average electricity supply" because of the inconsistency of demand. He echoed **Mr. Judge's** statement that 50 megawatts of wind power was entirely achievable within the portfolio. He added the company is already acquiring some renewable resources, such as 10 megawatts from a biomass plant in Thompson Falls, 5 megawatts from hydro-electric generation, and they were expecting an imminent response from bidders for wind resources. He also explained due to the different characteristics of renewable resources, the impact of those resources on the system should not be underestimated; wind power was particularly difficult to integrate into the system because of its intermittent nature and should be combined with a peaking resource to keep it available at a steady pace. He affirmed the company felt comfortable committing to bringing in about 50 megawatts without having to have an additional peaking resource; beyond that, it would necessitate additional contracts with such a resource. He also disagreed with having the PSC define these types of renewable resources, saying this should be done at the legislative level so it could stay as broad as possible to include hydro-electric power, and biomass. Finally,

he questioned why legislation was needed to include wind power if it was such an attractive and low impact way of generating electricity.

**Haley Beaudry, Columbia Falls Aluminum Company (CFAC)** stated his company used roughly 25% of the total electric load in Montana, buying it on the open market. He agreed with previous testimony and stated there was a host of other options for renewable energy sources; wind power was advocated here because its development was farthest along. He charged if wind was cheaper than the average market power, the mix would be 93% wind and 7% other sources; if prices were the same, the mix would be 50/50 because wind would be 100% sometimes, and 0% at other times. **Mr. Beaudry** hastened to say wind power was more expensive than the mix of power available in the market today, therefore, use of wind power had to be mandated. At current prices, the 7% of alternative power would cost CFAC roughly \$7 million per year which was more than the company could bear. He recalled Sen. Max Baucus being instrumental in removing the renewable portfolio standard from national energy legislation as it would have affected CFAC adversely. To illustrate his point, he was fond of posing the following question: If wind was really efficient and effective, why are oil tankers not sailing ships? Lastly, he implored the committee not to pass this legislation so his company could stay in business.

#### Informational Testimony:

**Greg Jergeson, PSC**, stated in the interest of energy conservation, he was cutting his testimony short and merely remarked the commission supported the goal of an economically efficient and balanced portfolio and to that end, had developed default supply procurement rules; the PSC's proposed rules required the default supplier to consider these resource attributes. NorthWestern Energy was currently conducting a competitive solicitation for wind projects, and the commission believed renewable resources will become part of a balanced, long-term portfolio.

#### Questions from Committee Members and Responses:

**SEN. TOOLE** invited **Mr. Leow** to submit **EXHIBIT(ens36b30)**, an amendment requested by **MontPIRG** which would set a second benchmark of a minimum of 20% from qualified renewable energy sources by July 1, 2020; due to the late hour, he had hurried his testimony and forgotten about the amendment. **SEN. TOOLE** felt this bill would not affect CFAC since they were not a default supply customer but **Mr. Beaudry** explained any change in the market price would affect the company; at one time, they had a

contract with the Bonneville Power Company for all of their power but now, that contract was only for a 4 megawatt base, and the balance was purchased in the open market. **SEN. TOOLE** again asked if they bought any power from the default supplier, and **Mr. Beaudry** stated they bought some from NorthWestern but had some 40 contracts for power. **SEN. TOOLE** then wondered if Bonneville's rates were below market. **Mr. Beaudry** advised they were much higher, and this had resulted in their move away from BPA. **SEN. STORY** asked how this mandate fit in with the commission's view of the default supplier having to be the most efficient aggregator of power. **Commissioner Jergeson** stated their guidelines addressed renewable energy resources but did not include a mandate. He believed given the RFP and the number of options available to the customer, the 7% could be achieved. **SEN. STORY** wondered if people had to pay more if a green product was offered at a higher price, and **Commissioner Jergeson** replied this was the anticipated option in the rules, adding at some point in the future, when technology was perfected, renewable energy option could be competitive. **SEN. STORY** referred to the bill being limited to NorthWestern Energy because of the transition and asked why it could not be applied to all of the regulated utilities. **SEN. STONINGTON** explained it would have made things too complicated; this bill was designed to get the commitment started to using renewable energy sources. **SEN. BEA MCCARTHY, SD 29, ANACONDA**, referred to a map **Ms. Reinhart** had passed around and pointed out a contradiction in that it said Western Montana could easily supply half of the energy needs in the U.S., whereas the map showed Western Montana had the poorest wind energy possibilities in the state. **Ms. Reinhart** explained the topography was to blame with much of the calculations based on mountain ranges where wind is optimal, such as in the Cascades and the Rocky Mountains. She added the PSC would evaluate where the best sites were. **SEN. McNUTT** voiced concern over having a numerical requirement for renewable energy in statute; most testimony touted the benefits of renewable energy in terms of its affordability and its being a great economic tool, yet without federal subsidies, renewable energy was less than competitive. He questioned how this could become a requirement in 2007 when there was no guarantee of a continuation of the tax break. **SEN. STONINGTON** assured him the tax credit had been renewed for several more years, and she was betting on the risk the price of wind energy would have come down enough to offset the ending of the tax credit so it could be competitive. **SEN. McNUTT** asked if this was to become viable, why put a requirement in statute as opposed to letting the industry decide what to include in their portfolio. **SEN. STONINGTON** explained she was certain there would not be any new generation in Montana until the transmission issue was solved; NorthWestern Energy had

stated they could absorb a net of 50 megawatts of wind energy, and she wanted to go ahead with the inherent prospect of economic development.

**Closing by Sponsor:**

**SEN. STONINGTON** closed on SB 365, saying Secretary of State Bob Brown had planned on appearing as a proponent but was unable to attend the hearing.

**ADJOURNMENT**

Adjournment: 7:00 P.M.

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SEN. ROYAL JOHNSON, Chairman

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MARION MOOD, Secretary

RJ/MM

**EXHIBIT (ens36bad)**